



UNITED STATES
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November 5, 2015

BY ECF AND OVERNIGHT MAIL

Honorable Kenneth M. Karas
United States District Court Judge

The Honorable Judith C. McCarthy
United States Magistrate Judge
United States Courthouse
300 Quarropas Street
White Plains, N.Y. 10601-4150

Re: SEC v. Edward Bronson et al.
12-CV-6421 (KMK)(JCM) (S.D.N.Y.)

Dear Judges Karas and McCarthy:

The Securities and Exchange Commission (the “Commission”) writes this letter to promptly bring to the Court’s attention information the undersigned counsel learned yesterday from counsel for Defendants Edward Bronson and E-Lionheart Associates LLC and Relief Defendant Fairhills Capital LLC (collectively “Defendants”) regarding Defendants’ ability to comply with their discovery obligations. Currently, Defendants cannot comply with Magistrate Judge McCarthy’s order that they produce to the Commission highly relevant emails of Defendant Edward Bronson and an as yet undetermined number of his associates, concerning Defendants’ Rule 504 transactions. (Dkt. No. 98.)

The Commission has been trying to get access to Bronson’s emails since it served its first discovery request on October 29, 2014. Defendants refused to produce Bronson’s emails, requiring the Commission to litigate the issue before Magistrate Judge McCarthy beginning in February 2015. On July 8, 2015, Magistrate Judge McCarthy ordered Defendants to produce to the Commission all documents, including emails, responsive to the Commission’s document requests concerning Defendants’ Rule 504 transactions. (Dkt. No. 98, at 7-9.)

Although Defendants have begun producing certain emails to the Commission, Defendants have not yet produced emails from Bronson’s custodian .pst file (which should contain a complete set of all emails he sent and received). Yesterday, counsel for Defendants informed the Commission that eight servers housing Defendants’ emails and other electronic documents, which were seized by the FBI in 2012 pursuant to a search warrant and subsequently

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returned, are corrupted. They stated that IT personnel at their law firm and IT personnel working for Defendants have not been able to restore pre-October 31, 2012 emails for Bronson and at least one other key custodian. The period for which defense counsel states the emails cannot be retrieved coincides with the relevant period of the Commission's allegations. Counsel further stated that a company that Defendants hired to maintain backup servers did not do so properly. Counsel indicated that Bronson was aware of the alleged server corruption in 2012 after the FBI returned the servers. The Commission is not currently in a position to independently verify the extent of any corruption or its causes.¹

The Commission immediately contacted the FBI to determine whether the FBI can provide to the Commission uncorrupted forensic images of the servers. If the Commission can obtain readable copies of the servers from the FBI, the Commission's forensics group believes that it can extract relevant data. The relevant material, however, will need to be reviewed by a separate privilege filter team. The timetable for receiving the forensic images from the FBI, extracting potentially relevant data, conducting a privilege review, conducting a relevance review, producing responsive emails and then reviewing the emails produced—tasks which will have to be coordinated and divided between the parties—is currently unclear.

Prior to yesterday's call with defense counsel, the Commission had noticed Bronson's deposition for December 10, 2015. Counsel informed the undersigned yesterday that Defendants have been able to restore certain emails for certain custodians (not including Bronson and at least one other key custodian) and plan to produce to the Commission approximately 35,000-40,000 other emails over the next four weeks. The Commission cannot realistically review this massive production in time for Bronson's scheduled deposition. More importantly, the Commission should not be put in the unfair position of deposing Bronson without access to his relevant emails.

These events place the Commission in a difficult position. The Commission has repeatedly expressed its desire to move this case, filed in August 2012, forward. Also, it is mindful that the Court's last order extending the fact discovery deadline to January 15, 2016 (Dkt. No. 112) (primarily due to expanded discovery obligations on both parties arising from the July 8, 2015 discovery order) indicated that no more extensions would be granted. The Commission is reluctant to further prolong this case. However, the Commission should not be prejudiced by Defendants' apparent inability to produce Bronson's highly relevant emails. The Commission also intends to investigate the nature and extent of any server corruption, and what caused any such corruption, to determine whether there are spoliation issues.

The Commission intends to update Your Honors as soon as it can: (1) determine if the FBI has accessible copies of the servers; (2) develop a realistic timetable for the various steps that will be necessary to retrieve, review and produce responsive emails; and (3) assess how that

¹ During prior meet and confers with the Commission, defense counsel alluded to possible server corruption issues but the Commission was not informed that the issues could not be resolved or the extent of the problem until yesterday.

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will impact the timing of Bronson's, and possibly other, depositions. While the Commission will continue to meet and confer with Bronson's counsel on these questions, we anticipate requesting a status conference in the near future to discuss the best way to address these troubling developments.

Respectfully submitted,



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Senior Trial Counsel

cc (via email):

Benjamin Fischer, Esq.

Devin Cain, Esq.

*Counsel for Defendants Edward Bronson and E-Lionheart, LLC and
Relief Defendant Fairhills Capital, Inc.*